



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR- EPA-R09-OAR-2022-0480; FRL-9873-01-R9]

Air Plan Disapproval; California; Antelope Valley Air Quality Management District and Mojave Desert Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove revisions to the Antelope Valley Air Quality Management District (AVAQMD) and the Mojave Desert Air Quality Management District (MDAQMD) portions of the California State Implementation Plan (SIP) concerning rules submitted to address section 185 of the Clean Air Act (CAA or the Act) with respect to the 1-hour ozone standard. We are proposing action on these local rules that were submitted as equivalent alternatives to a statutory section 185 program. We are taking comments on this proposal and plan to follow with a final action.

DATES: Comments must be received on or before [Insert date 30 days after date of publication in the *Federal Register*].

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R09-OAR-2022-0480 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the

primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Donnique Sherman, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4129 or by email at sherman.donique@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us,” and “our” refer to the EPA.

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I. The State’s Submittal

A. What rules did the State submit?

Table 1 lists the rules proposed for disapproval with the dates that they were adopted by the local agencies and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Amended	Submitted
AVAQMD	315	Federal Clean Air Act Section 185 Penalty	10/18/11	12/14/11
MDAQMD	315	Federal Clean Air Act Section 185 Penalty	10/14/11	12/14/11

On June 14, 2012, the submittals for AVAQMD Rule 315 and MDAQMD Rule 315 were deemed by operation of law to meet the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of AVAQMD Rule 315 in the SIP, although the AVAQMD adopted an earlier version of this rule on February 15, 2011, and CARB submitted it to us on April 22, 2011. We consider this earlier submittal to have been superseded by the December 14, 2011 submittal. While we can act on only the most recently submitted version, we have also reviewed materials provided with previous submittals.

There are no previous versions of MDAQMD Rule 315 in the SIP, although the MDAQMD adopted an earlier version of this rule on February 28, 2011, and CARB submitted it to us on April 22, 2011. We consider this earlier submittal to have been superseded by the December 14, 2011 submittal. While we can act on only the most recently submitted version, we have also reviewed materials provided with previous submittals.

C. What is the purpose of the submitted rules?

Under sections 182(d)(3), (e), (f) and 185 of the Act, states with ozone nonattainment areas classified as Severe or Extreme are required to submit a SIP revision that requires major stationary sources of volatile organic compounds (VOC) or oxides of nitrogen (NO_x) emissions in the area to pay a fee if the area fails to attain the standard by the attainment date. The required SIP revision must provide for annual payment of the fees, computed in accordance with CAA

section 185(b).

The purpose of AVAQMD Rule 315 and MDAQMD Rule 315 is to satisfy the requirements of sections 182 and 185 of the Act by utilizing an equivalency approach consistent with the principles of section 172(e) of the Act. Under these rules, AVAQMD and MDAQMD will track, calculate, analyze, and report on expenditures designed to result in VOC or NO_x reductions within the Districts, to implement an alternative program that is not less stringent than a statutory CAA section 185 fee program. The rules include calculation of the CAA section 185 fee obligation, establishment of a CAA section 185 equivalency “Tracking Account,” an annual demonstration of equivalency, reporting to CARB and the EPA, and a provision requiring major sources to pay fees directly in the event the area fails to establish equivalency. The “Tracking Account” would include funds from qualified programs that are surplus to the 1-hour ozone SIP and designed to result in direct reductions or facilitate future reductions of VOC or NO_x emissions, as approved by the EPA.

II. EPA’s Evaluation and Action

A. How is the EPA evaluating these rules?

SIP rules must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions (see CAA section 193). The EPA is also evaluating these rules for consistency with the statutory requirements of CAA section 185. Equivalent alternative programs designed to meet the CAA section 185 obligation for the 1-hour ozone national ambient air quality standard (NAAQS) must be consistent with the principles of CAA section 172(e) and must be “not less stringent” than the statutory section 185 program.

Guidance and policy documents that we use to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include

the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).

B. Do these rules meet the evaluation criteria?

AVAQMD Rule 315 and MDAQMD Rule 315 implement a fee equivalency approach consistent with the principles of CAA section 172(e).¹ The rules are largely consistent with general CAA requirements regarding SIP submissions. However, the EPA proposes to disapprove the rules because they contain provisions that do not meet our evaluation criteria and affect rule enforceability and stringency. These deficiencies are summarized below and discussed further in the technical support document (TSD) for these rules.

C. What are the rule deficiencies?

These provisions do not satisfy the requirements of section 110 and part D of title I of the Act and prevent full approval of the SIP submittal. We propose to disapprove the SIP revision based on the following deficiencies:

1. AVAQMD Rule 315 refers to the term "Major Facility" as defined in "District Rule 1301." The current SIP-approved Rule 1301 for AVAQMD does not contain a definition of "Major Facility."
2. The Districts did not provide a justification for the method chosen to calculate alternate baseline emissions for facilities with emissions that are irregular, cyclical, or otherwise

¹ We have previously set out the legal rationale for equivalent alternative section 185 programs. See 76 FR 45212 (July 28, 2011), and 77 FR 1895 (January 12, 2012) and the accompanying docket materials.

vary significantly.

3. The rules establish an area-wide equivalency “Tracking Account.” This system requires the cooperation and coordination of three districts: AVAQMD, MDAQMD, and the South Coast Air Quality Management District (SCAQMD). Each rule requires the respective Air Pollution Control Officer (APCO) to request an accounting from other Districts, but there is no requirement for the APCO to provide their accounting to the other Districts. The rules assume accounting across the three Districts with the same system in place. SCAQMD does not have a rule that contains the same provisions. As a result, the area-wide accounting system is not enforceable.
4. The formula for calculating the penalty fee needs correcting to properly reflect the inflation adjustment based on the Consumer Price Index.

The TSD for AVAQMD Rule 315 and MDAQMD Rule 315 contains further discussion and analysis of these deficiencies.

D. EPA recommendations to further improve these rules

The TSD describes additional rule revisions that we recommend for the next time the Districts modify these rules.

E. Proposed action and public comment

As authorized in section 110(k)(3) of the Act, we are proposing full disapproval of submitted AVAQMD Rule 315 and MDAQMD Rule 315. If we finalize this disapproval, the final disapproval action would trigger sanctions under CAA section 179(a)(2) and 40 CFR 52.31 unless the EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months of the effective date of the final action. In addition to the sanctions, CAA section 110(c)(1) provides that the EPA must promulgate a federal implementation plan (FIP) addressing any disapproved elements of the plan within two years after the effective date of the disapproval unless the State submits, and the EPA approves, the required SIP submittal. As a result of the

EPA's January 5, 2010 determination that California had failed to submit the required CAA section 185 fee programs for the 1-hour ozone NAAQS for certain nonattainment areas (75 FR 232), the EPA is already subject to a statutory deadline to promulgate a FIP for this purpose.

We will accept comments from the public on the proposed disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA, because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new information collection burdens, but will simply disapprove certain state requirements for inclusion in the SIP.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. This proposed SIP disapproval, if finalized, will not in-and-of itself create any new requirements but will simply disapprove certain state requirements for inclusion in the SIP.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. This action proposes to disapprove pre-existing requirements under state or local law, and imposes no new

requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Coordination with Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175, because the SIP revision that the EPA is proposing to disapprove would not apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, and will not impose substantial direct costs on tribal governments or preempt tribal law. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive order. This action is not subject to Executive Order 13045 because this proposed SIP disapproval, if finalized, will not in-and-of itself create any new regulations, but will simply disapprove certain state requirements for inclusion in the SIP.

H. Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

Section 12(d) of the NTTAA directs the EPA to use voluntary consensus standards in its

regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. The EPA believes that this action is not subject to the requirements of section 12(d) of the NTTAA because application of those requirements would be inconsistent with the CAA.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Population

The EPA lacks the discretionary authority to address environmental justice in this rulemaking.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

AUTHORITY: 42 U.S.C. 7401 *et seq.*

Dated: June 12, 2022.

Martha Guzman Aceves,
Regional Administrator,
Region IX.

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